

★ SEP 23 2009 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

Heinz Kauhsen, d/b/a Classic Racing Cars

Plaintiff,

-against-

Aventura Motors, Inc.

Defendant.

VERIFIED COMPLAINT

Civil Action No.

09 4114

MURLEY, J.

- JURY DEMANDED

ORENSTEIN, M.J.

Plaintiff Heinz Kauhsen, d/b/a Classic Racing Cars ("Plaintiff"), by and through its attorneys, as and for its Complaint against Defendant Aventura Motors, Inc. ("Defendant") brings this action and alleges as follows:

PRELIMINARY STATEMENT

This action seeks damages in the amount of \$147,560.06 plus interest and the costs and expenses including but not limited to reasonable attorney's fees of this action based on the seller's breach of a contract for the international sale of goods and the seller's fraud to the buyer's detriment. The parties' contract is governed by the United Nations Convention on Contracts for the International Sale of Goods, 15 U.S.C. App. (hereinafter "CISG").

JURISDICTION

1. Jurisdiction of this Court is based upon diversity of citizenship pursuant to 28 U.S.C. § 1332. The amount in controversy is in excess of \$75,000, exclusive of interest and costs.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391. There is no other venue among the federal courts that has a relationship with the facts and circumstances of this

matter.

PARTIES

3. Plaintiff Heinz Kauhsen ("Kauhsen"), a German citizen, does business as "Classic Racing Cars" with his principal place of business at Lindener Strasse 123, 52146 Würselen, Germany. Kauhsen is engaged in the sale, repair and overhaul of classic racing cars with a specialty in Porsche 356.

4. Upon information and belief, Defendant Aventura Motors, Inc. ("Aventura") is a corporation organized and existing under the laws of the State of New York with its principal place of business at 566 County Road 39, Southampton, NY 11968. Upon information and belief, Aventura is owned and/or managed by Mr. Dean Silvera. Aventura is a full service highline car dealership and offers sales, service, restoration and concours detailing of both contemporary and classic fine motor cars.

STATEMENT OF FACTS

5. On or about June 25, 2008, through on or about June 30, 2008, Aventura offered for sale on eBay an alleged 1955 Porsche 356 Pre A Cabriolet, VIN# 60641 (hereinafter the "vehicle") under Item# 220250361548, by posting 31 photos as well as the following text:

"This is a 1955 Porsche 356 Pre A Cabriolet. This is one of the rarest Porsche's ever made and comes with a Porsche Certificate of authenticity. This car started out in 2/55 and came equipped with an optional bench bucket seat. Car received a rotisserie restoration in 1999 and is absolutely beautiful. (See photos of resto as well as certificate of authenticity.) This is an excellent opportunity to own an extremely rare Pre A Cab.

| | |
|-----------------------|-------------------------|
| Stock: 60641 | Body Style: Convertible |
| Color: RUBY RED | Year: 1955 |
| Interior Color: BEIGE | Engine 4 CYLINDER |
| VIN 60641 | Miles 21288 |
| Transmission: MANUAL | |

6. A rotisserie restoration is used commonly when restoring vintage automobiles. Many vehicles of the 1950ies were unibody structured automobiles, i.e. they did not have full

frames underneath the body of the vehicle. Instead, sub-frames and rear differentials were attached to the unibody replacing the full frame.

7. A rotisserie restoration consists of replacing various parts or reconditioning current ones. Typically, every nut and bolt attached to the vehicle is either restored or replaced depending on condition. The body is physically removed from the frame so every crack and crevice of the automobile can be cleaned and repaired. The vehicle is scrutinized from top to bottom including the undercarriage. Suspension parts usually are painted or powder coated. Exhaust systems will be all new and either aluminized or stainless steel. All body mounts and suspension bushings will be either new rubber or polyurethane. The engine, interior and trunk area are also meticulously re-engineered to original quality. When restoring the vehicle, the restorer will mount the unipanel onto a rotisserie device. The device is much like the kitchen style rotisserie unit used for cooking but on a far larger scale. Once mounted on the rotisserie, the restorer can then rotate the body around as work is being done on each section of the vehicle. The finished product from the rotisserie restoration method is a fully reconditioned vehicle with new or like new parts. Once work is completed, the fully restored section is removed from the rotisserie and the vehicle is reassembled. The finished product is a rotisserie restored automobile.

8. One of the 31 pictures posted on eBay showed the alleged Porsche certificate of authenticity, containing the following text:

"PORSCHE

Certificate of Authenticity

The Porsche vehicle with the identification number listed below was manufactured with the following assembly specifications:

60641

Model Year/Type: 1955 356 CABRIOLET

Owner: Thomas Edward Lawrence III

Birth Date/Delivery Date: 02/08/1955

Engine Number: 33287 546

Transmission Number: 3981 519

Exterior Paint Color/Code: Terra Cotta / 5409

Interior Material Type: Leather
Optional Equipment: Bench Bucket Seats
/s/ Richard Ford
Richard S. Ford, Vice President & COO
Porsche Cars North America, Inc.”

9. Interested in the posted vehicle, on or about between June 25, 2008, and June 30, 2008, Kauhsen instructed his assistant Ms. Andrea Rudorf (hereinafter “Ms. Rudorf”) to contact Aventura via telephone. Ms. Rudorf informed Aventura that Kauhsen is engaged in the business of trading Porsche classic racing cars and intended to resell the vehicle shortly after delivery thereof.

10. In answer to Ms. Rudorf’s question whether the car did indeed receive the 1999 restoration and whether it was in such excellent condition as described on eBay, Aventura’s Mr. Todd Silvera replied: “Yes, absolutely.” Ms. Rudorf also asked about the vehicle’s engine and Mr. Todd Silvera represented that the vehicle was equipped with a fully-assembled, running Porsche 356 Pre A 1500cc engine in good condition, type 546, engine number 33287.

11. Relying on Mr. Todd Silvera’s representations, before the end of the bidding period on or about June 30, 2008, 07:13:55 PDT, Kauhsen placed the winning offer on eBay in the amount of \$95,000.00.

12. On or about July 1, 2008, Aventura sent invoice number 709 to Kauhsen asking for payment of \$95,000.00 for the vehicle.

13. After having received payment in full from Kauhsen, Aventura initiated the shipment of the vehicle via Rotterdam. The vehicle arrived at Kauhsen’s premises on or about September 29, 2008. Upon arrival, Kauhsen took various photographs of the pretense delivered.

14. On or about September 30, 2008, Ms. Rudorf called Mr. Todd Silvera to inform him about the vehicle’s defects, including, but not limited to,

- delivery of a rusty and wrong engine type 1600cc with the engine number having been scratched away,
- a severely torn roof top,
- cracks and crevices in the driver's door,
- cracks, crevices and rust on the vehicle front and driver side,
- severe rusting and molding on the floor sides of the vehicle bottom panels making the vehicle floors instable when people were sitting in the vehicle,
- bubbling, peeling and falling paint due to uncommonly thick body filler between the paint and the vehicle's frames and panels,
- the missing certificate of authenticity, and
- missing proof of the alleged 1999 rotisserie restoration
(altogether hereinafter "the defects on first sight").

Moreover, the vehicle was not equipped with transmission number 3981.

15. On or about October 2, 2008, Kauhsen, through Ms. Rudorf, sent Aventura an email confirming the defects on first sight and supplied photographs in support.

16. In addition, Kauhsen supplied the contact details of Mr. Joe Ruiz for Aventura to procure and deliver a substitute fully-assembled, ready to be installed 356 Pre A 1500cc engine in good condition with the same specifications as the promised engine number 33287.

17. Upon information and belief, on or about the week starting October 6, 2008, Aventura was in contact and negotiated with Mr. Joe Ruiz about the purchase of a fully-assembled, ready to be installed 1500cc replacement engine in good condition. 1500 cc Porsche 356 engines are extremely rare while 1600cc engines are more frequent.

18. On or about October 14, 2008, Aventura, through Mr. Todd Silvera, offered the payment of \$2,000.00 to Kauhsen in compensation for the damages suffered. Kauhsen

rejected the offer as being unacceptable.

19. In October 2008, Mr. Joe Ruiz offered a 356 Porsche 1500cc engine in a turn-key, fully-assembled, running and tested condition to Kauhsen for \$25,000.00.

20. The delivered 1600cc engine's market net-worth is about \$1,700.00.

21. From mid-October 2008 until December 2, 2008, Kauhsen restored the vehicle to make it "absolutely beautiful" and put it into a condition as it would have been had the car indeed received a rotisserie restoration in 1999. Kauhsen incurred costs in the amount of EUR 46,402.74 consisting of parts and 346 hours of labor incurred in body shop, paint shop and mechanics work. At today's EUR/U.S. Dollar exchange rate (1 EUR = \$1.48) this equals \$68,676.06. A true and correct copy of Kauhsen's invoice to Aventura is attached and made part hereof as **Exhibit A**.

22. In early January 2009, Kauhsen received an offer from Mr. Rolf Dobro for the purchase of the vehicle for EUR 100,000.00. Upon learning about the absence of the certificate of authenticity and about the vehicle to contain a 1600cc engine, the purchaser reduced his offer to EUR 70,000.00. Having further marketed the vehicle and in the absence of further offers, Kauhsen sold the vehicle for EUR 70,000.00 on or about late January 2009.

23. On or about March 4, 2009, Porsche Cars North America, Inc. (hereinafter "Porsche Cars North America") informed that the Certificate of Authenticity depicted on the offer on eBay contained information different from the information on record with Porsche Cars North America's original build sheet (a/k/a kardex), i.e. the way the vehicle originally came assembled from the manufacturer. Porsche's information is as follows:

"VIN: 60641
Model: 1955 356/1500 Reutter Cabriolet
Production Date: 08/08/1954
Engine Number: 33287
Transmission Number: 3981
Exterior Paint Color: Terra Cotta/5409
Interior Material & Color: Ocher Leather

Optional Equipment: NONE listed”

COUNT I

BREACH OF CONTRACT (CISG 15 U.S.C. App. Articles 45(1)(b), 74)

24. Plaintiff Kauhsen repeats, realleges, and adopts the allegations in paragraphs 1 through 23 and incorporates them herein by reference.

25. In relevant part, CISG Article 45(1) provides: “If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may: ... (b) claim damages as provided in articles 74 to 77.”

26. CISG Article 74 provides: “Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.”

27. Pursuant to the parties’ international contract of sale for the vehicle, concluded on or about June 30, 2008, Aventura promised to sell and deliver a 1955 Porsche 356 Pre A Cabriolet, VIN # 60641

- that is “absolutely beautiful”,
- that had received a rotisserie restoration in 1999,
- that comes with a Porsche Certificate of Authenticity,
- and that is equipped with a fully-assembled, running Porsche 356 Pre A 1500cc engine # 33287 in good condition having a market value of \$25,000.

28. Aventura delivered a 1955 Porsche 356, VIN # 60641

- in very poor condition,

- without Certificate of Authenticity,
- with a rusty Porsche 356 1600cc engine in poor condition not containing the engine number having a market value of \$1,700,
- that had not received a rotisserie restoration within the last 10 years.

29. Plaintiff suffered damages amounting to at least \$147,560.06. The damages are comprised of:

- \$68,676.06 in restoration work and parts to restore the vehicle to be “absolutely beautiful”,
- \$34,484 in diminished value of the delivered good due to the wrong engine, and
- \$44,400 in lost profits due to the non-delivery of the promised engine and certificate of authenticity.

COUNT II

FRAUD

30. Plaintiff repeats, realleges, and adopts the allegations in paragraphs 1 through 29 and incorporates them herein by reference.

31. Defendant knowingly misrepresented to Plaintiff that the vehicle contained a 1500cc engine # 33287. Defendant further knowingly misrepresented to Plaintiff that Defendant delivers a Porsche Certificate of Authenticity and instead posted a forged document on eBay as part of its offer. Moreover, Defendant posted photographs of a restoration that did not take place. Relying on Defendant's representations, Defendant thereby induced Plaintiff to place the winning offer on eBay.

32. As a result of Defendant's fraudulent inducement, Plaintiff suffered damages in at least the amount of \$147,560.06.

COUNT III

PROMISSORY ESTOPPEL

33. Plaintiff repeats, realleges, and adopts the allegations in paragraphs 1 through 32 and incorporates them herein by reference.

34. Plaintiff reasonably and foreseeably relied upon Defendant's promise to sell and deliver a 1955 Porsche 356 Pre A Cabriolet, VIN # 60641

- that is "absolutely beautiful",
- that had received a rotisserie restoration in 1999,
- that comes with a Porsche Certificate of Authenticity,
- and that is equipped with a fully-assembled, running Porsche 356 Pre A 1500cc engine # 33287 in good condition having a market value of \$25,000.

35. Defendant did not fulfill its promises. By its reliance, Plaintiff suffered damages in at least the amount of \$147,560.06. Injustice can only be avoided, if Plaintiff is made whole.

COUNT IV

UNJUST ENRICHMENT

36. Plaintiff repeats, realleges, and adopts the allegations in paragraphs 1 through 35 and incorporates them herein by reference.

37. Plaintiff paid \$95,000 to Defendant for the purchase of a vehicle different from the vehicle delivered by Plaintiff. At the expense of Plaintiff, Defendant is unjustly enriched by the purchase price of \$95,000.

COUNT V

DECLARATORY JUDGMENT

38. Plaintiff repeats, realleges, and adopts the allegations in paragraphs 1 through 37 and incorporates them herein by reference.

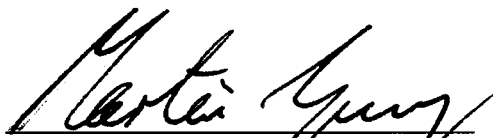
39. Under 28 U.S.C. §2201, Plaintiff is entitled to a judgment declaring that Plaintiff is entitled to the payment of at least \$147,560.06.

WHEREFORE, Plaintiff demands a Judgment of this Court in its favor be entered against the Defendant:

- (a) for the first through third counts designated "Breach of Contract (CISG 15 U.S.C. App. Articles 45(1)(b), 74", "Fraud" and "Promissory Estoppel" ordering the Defendant to pay to the Plaintiff an amount not less than \$147,560.06, plus interest and the costs and expenses including but not limited to reasonable attorney's fees of this action;
- (b) for the fourth count designated "Unjust Enrichment" ordering the Defendant to pay to the Plaintiff an amount not less than \$95,000.00, plus interest and the costs and expenses including but not limited to reasonable attorney's fees of this action;
- (c) for the fifth count designated "Declaratory Judgment" for a judgment from the Court declaring that Defendant owes Plaintiff the payment of an amount not less than \$147,560.06, plus interest and the costs and expenses including but not limited to reasonable attorney's fees of this action; and
- (d) such other and further relief as the Court deems fair and proper.

DATED: New York, New York
September 22, 2009

Gusy Van der Zandt LLP



Martin F. Gusy, Esq. (MG0516)
500 Fifth Avenue, Suite 1410
New York, NY 10110
Tel: 646-502-8066

Attorneys for Heinz Kauhzen

Exhibit A

PORSCHE

356 550 718 904 911

Classic Racing Cars - Lindener Str.123- D-52146 Würselen

Aventura Motors Inc.

566 County Rd. 39

Southampton

NY 11968

Heinz Kauhnen

PORSCHE - RESTAURATION
KAROSSERIE-LACK-TECHNIK
Lindener Str. 123
52146 Würselen Germany
Tel. 0049 2405/475757
Fax 0049 2405/445756
Mobil 0163 / 7356356
eMail info@crc-po.de
www.crc-po.de
UST-ID.-NR. DE 121748039
Steuer-NR 20258680349
Raiffeisenbank Eschweiler
Kto 2501073043 BIZ 39362254

Porsche 356 Cabriolet VIN No. 60641

Full frame-off rotisserie restoration including removing front sub-frame, rear differential, glass and body panels

Powder/sand coating of frame and various body panels

Replacing entire undercarriage and bottom frame , reinstalling same

Replacing both car-jack receipts

Deinstalling and replacing right and left outer sillboards

Replacing driver's door in parts, including adjustment of replacing parts

Reconditioning of gear shift control, including replacement of parts

Deinstalling vehicle front panels in parts and replacing same

Reconditioning vehicle back panels on both sides

Replacing body mounts and suspension bushings

WAGES/BODY SHOP

2260AW Time basis 10 AW = 1 hour AW = EURO 8.59

19.413,40 EURO

Re-engineering vehicle's technology, including engine

WAGES/TECHNOLOGY

1200AW Time basis 10 AW = 1 hour AW = EURO 7.59 9.108,00 EURO

Preparing vehicle for paint shop

Completing full paint job for vehicle

WAGES/PAINT SHOP 8.500,00 EURO

TOTAL 37.021,40 EURO

PARTS

Bottom frame 549.60 EURO

2 outer sillboards 446.20 EURO

Tin coating and welding supplies 286.70 EURO

Powder/sand coating supplies 690.00 EURO

Net Total 38,993.90 EURO

19% V.A.T. 7,408.84 EURO

TOTAL 46,402.74 EURO

VERIFICATION OF COMPLAINT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

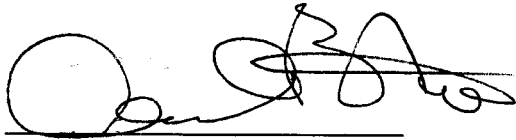
The undersigned affirms under penalty of perjury:

1. That he is the attorney for Plaintiff Heinz Kauhse, d/b/a Classic Racing Cars;
2. That he has read the foregoing verified complaint and knows the contents thereof;
3. That the same are true and correct to his own knowledge except as to matters stated to be alleged upon information and belief; and as to those matters he believes them to be true.

The undersigned makes this verification because Plaintiff is not in the county where the undersigned has his office.


Martin F. Gusy

Sworn to before me this
22 day of September, 2009



Carol J. Burton
Notary Public, State of New York
No. 01BU6126892
Qualified in Kings County
Commission Expires May 16, 2013